

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
August 23, 2000

In the Matter of

Inverness Forest
Association, Inc.

Complainant,

vs.

Susan Notter

Respondent

Case No. 453-G

Montgomery County
Common Affairs

OCT 27 2000

Received

Decision and Order

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing, on August 23, 2000, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel having considered the testimony and evidence of record, finds, determines and orders as follows:

On or about August 1, 1999, Inverness Forest Association, Inc. (hereinafter the "Complainant" or "Association") filed a formal dispute with the Office of Common Ownership Communities against Susan Notter (hereinafter the "Respondent"). The Complainant alleged that the Respondent installed replacement windows to her home without obtaining the prior written approval of the Association as required by the Association covenants and that the windows installed by the Respondent are not consistent with the architectural scheme of the Association. The Respondent contended, among other things, that her windows were installed out of safety concerns for her children and that the windows were compatible with the community standards and other windows in the Association. The Complainant requested that the Commission order the Respondent to replace her windows and award the Complainant its attorneys fees.

In as much as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities and the Commission voted that it was a matter within the Commission's jurisdiction and the hearing date was scheduled.

Findings of Fact

Based on the testimony and evidence of record, the Panel makes the following findings:

1. Susan Notter is the owner of a townhouse within the Inverness Forest Association, Inc., ("Association") such townhouse commonly known as 8121 Inverness Ridge Road, Potomac,

Maryland 20854 ("Lot"). Sometime before April of 1999, Respondent replaced five sets of windows on her Lot with four sets of white "double hung" windows and a white sliding glass window on her basement level. The parties stipulated that the only windows at issue were the four double-hung replacement windows.

2. The Association was created by an Articles of Incorporation and Declaration of Covenants, Conditions and Restrictions ("Declaration") which were recorded among the land records of Montgomery County, Maryland and which encumber and bind the Lot.

3. Article V of the Declaration states, *inter alia*, the following:

No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by a architectural committee composed of three (3) or more members appointed by the Board...

4. The Respondent, by letter dated May 5, 1999 to the Association, admitted that she did not, before installing the replacement windows, receive written approval from the Association pursuant to Article V of the Declaration and that she believed she had the right to make "...improvements according to my own best judgement." Subsequently, on May 30, 2000, Respondent submitted an application to the Association for approval of the replacement windows and the Association, by letter dated June 6, 2000, denied the Respondent's application.
5. The Complainant, through its Architectural Control Committee chairperson, Francis Short, testified that the type of double-hung replacement windows installed by the Respondent were not in keeping with the architectural scheme of the community which reflected the style of the original windows installed during the original construction.
6. The testimony of Francis Short was expanded upon by Donald Little, a licensed architect, who testified that the type of windows installed by the Respondent varied from the general window scheme within the Association.
7. The Respondent introduced a single photograph (Respondent's Exhibit #1) of one house out of more than 300 homes as evidence that other windows within the Association do not follow the architectural scheme and pattern of the original construction.
8. Lanny Weintraub, a home-inspection expert, testified on behalf of the Respondent that he believed the Respondent had valid safety concerns with the original windows and was justified in replacing the same; further that in Mr. Weintraub's opinion, the CABO One and Two Family Building Code 1995 would not have allowed the Respondent to install windows matching those of the original windows.

9. Complainant called Lee Reamy of the Montgomery County Department of Permitting Services who indicated that no permit would be required for the replacement of windows within the Association.
10. Complainant introduced evidence (Complainants Exhibit #10) of legal invoices that the Complainant incurred in pursuing replacement of the Respondent's windows and testimony that such invoices had been paid. Complainant further submitted a copy of an Amendment to the Bylaws of the Association (specifically to Article VII, Section 1) purportedly adopted at a September 21, 1989 membership meeting, providing the Association with the right to recover "...expense of enforcement, including reasonable attorney's fees."
11. Despite demand, the Respondent has not removed the double-hung replacement windows.

Conclusions of Law

The Panel finds that the Architectural Control Committee ("ACC") of the Association has the express authority pursuant to Article V of the Association's Declaration to pre-approve any exterior additions, changes or alterations to lots within the Association.

The Panel further finds that the evidence is clear that the Respondent installed her double-hung replacement windows without applying to the ACC for approval. The Association's decision to deny the subsequent application was not arbitrary or capricious and appears to be consistent with the "harmony" of external design and architectural scheme of the community. The Panel does not believe that such consistent enforcement is crippled by the single instance at another property within the Association as cited by the Respondent. Respondent presented no evidence that such other window/door had been approved by the ACC or allowed to remain without objection.

As to Respondent's safety concerns, while the Panel is sympathetic with a parent's concerns for children's safety, the Respondent provided no evidence to indicate that her safety concerns could be addressed only by the allowance of the particular replacement windows she installed. The testimony was clear that the County did not, and would not, require a permit for the installation of Respondent's replacement windows or for new windows which conformed to the approved style within the Association. Further, the Panel did not find that Respondent had established that the Association-approved style of windows violated any specific code adopted in Montgomery County.

As to the Complainant's request for an award of \$3,353.52 in attorney's fees, the Complainant provided evidence that the legal fees had been incurred and paid. The Complainant did not, however, provide any testimony as to the reasonableness of the legal fees but just that the fees were incurred and paid. Article VII, Section I of the Bylaws provides for the recovery of "reasonable attorney's fees". Under the circumstances, the Panel will award \$1,000 in legal fees to the Complainant based on the Panel's estimation of the reasonableness of the fees and complexity of the case.

Order

In view of the foregoing, and based on the evidence of record, it is, on this ^{25th} day of October 2000, hereby Ordered by the Commission Panel that:

1. The Respondent must, not later than 180 days from the date of this Order, replace the four "double-hung" replacement windows with windows which have been pre-approved by the Association.
2. Within 365 days of this Order the Respondent must pay the Complainant \$1,000.

The foregoing was concurred in by panel members Philbin, Skobel and Perkins.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court Of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Peter S. Philbin, Panel Chair
Commission on Common
Ownership Communities